

Central Intelligence Agency



Washington, D.C. 20505

21 December 2012

Mr. Rich Jones
MuckRock News
DEPT MR 2070
P.O. Box 55819
Boston, MA 02205-5819

Reference: F-2013-00162

Dear Mr. Jones:

On 25 October 2012, the office of the Information and Privacy Coordinator received your 24 October 2012 Freedom of Information Act (FOIA) request for records on **John Kiriakou**. We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

Although you have provided most of the information required before processing your request, agency regulations encourage requesters seeking information on *living* third parties to provide a signed affidavit or declaration from the third parties waiving all or some of their privacy rights. We can search without this authorization, but if we locate responsive records, privacy concerns may require us to protect the information from release.

FOIA exemption (b)(6), a copy of which I have enclosed for reference and retention, requires us to protect information “the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” In reaching this determination, we use the test our enclosed regulations outline at 32 CFR § 1900.32(b): “the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.” Therefore, the waiver will assist us with this determination.

I must consider your request for a fee waiver under the standards the Agency FOIA regulations outline, which you will find at Part 1900 of Title 32 of the Code of Federal Regulations, and Department of Justice guidance. I have reviewed your request under those standards to determine “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” Your request does not meet these standards because disclosing the

information you seek is not "likely to contribute significantly to public understanding of the operations or activities of the United States Government." I therefore deny your request for a fee waiver.

You may appeal this decision, in my care, within 45 days from the date of this letter. Should you choose to appeal the denial of your request for a fee waiver, you are encouraged to provide an explanation supporting your appeal. Agency regulations also specify that if the Agency has started to process a request, the Agency may only accept an appeal of a fee waiver denial if the requester agrees to be responsible for the costs in the event of an adverse administrative or judicial decision.

Based on the information provided in your letter, we determined that your request falls into the "representative of the news media" fee category, which means you may have to pay for the cost of reproducing released records, which would be assessed at a rate of ten cents per page after the first 100 pages, which you receive free. Enclosed is a copy of our fee schedule for your records.

We will hold your request in abeyance for 45 days from the date of this letter pending receipt of the subject's **privacy waiver and your commitment to pay all fees** as outlined above.

Sincerely,



Michele Meeks
Information and Privacy Coordinator

Enclosures

§ 1900.32 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply.

(1) *personal information* means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) *public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

CENTRAL INTELLIGENCE AGENCY

32 CFR Parts 1900, 1901, 1907, 1908, and 1909

Freedom of Information Act; Privacy Act; and Executive Order
12958; Implementation Agency: Central Intelligence Agency.

ACTION: Interim rule.**§1900.02 Definitions**

For purposes of this part, the following terms have the meanings indicated:

(a) **Agency or CIA** means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) **Days** means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) **Control** means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records,

(d) **Coordinator** means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Freedom of Information Act;

(e) **Direct costs** means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space, it does include:

(1) **Pages** means paper copies of standard office size or the dollar-value equivalent in other media;

(2) **Reproduction** means generation of a copy of a requested record in a form appropriate for release;

(3) **Review** means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions, but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(4) **Search** means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar-value equivalent in computer searches;

(f) **Expression of interest** means a written communication submitted by a member of the public requesting information on or

concerning the FOIA program and/or the availability of documents from the CIA;

(g) **Federal agency** means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C 552(f);

(h) **Fees** means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the Agency in determining the proper fee category and the Agency may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) **Commercial** means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income, or profit interests;

(2) **Non-commercial educational or scientific institution** means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) **Representative of the news media** means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(4) **All other** means a request from an individual not within paragraph (h)(1), (2), or (3) of this section;

(i) **Freedom of Information Act** or "FOIA" means the statutes as codified at 5 U.S.C 552;

(j) **Interested party** means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(k) **Originator** means the U.S. Government official who originated the document at issue

or successor in office, or such official who has been delegated release or declassification authority pursuant to law;

(l) **Potential requester** means a person, organization, or other entity who submits an expression of interest;

(m) **Reasonably described records** means a description of a document (record) by unique identification number or descriptive terms which permit an Agency employee to locate documents with reasonable effort given existing indices and finding aids;

(n) **Records or agency records** means all documents, irrespective of physical or electronic form, made or received by the CIA in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the CIA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the CIA or because of the informational value of the data contained therein; it does not include:

(1) **Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials** acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by the Agency, they are fully subject to the disclosure provisions of the FOIA;

(2) **Index, filing, or museum documents** made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) **Routing and transmittal sheets and notes and filing or destruction notes** which do not also include information, comment, or statements of substance;

(o) **Responsive records** means those documents (i.e., records) which the Agency has determined to be within the scope of a FOIA request.

§1900.13 Fees for Record Services

(a) **In general.** Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or if some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) **Fee waiver requests.** Records will be furnished without charge or at a reduced rate whenever the Agency determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and

is not primarily in the commercial interest of the requester; the Agency shall consider the following factors when making this determination:

(i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so,

(ii) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States Government operations or activities; and, if so,

(iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so,

(iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the disclosure is primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Chair of the Agency Release Panel via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth above.

(d) *Time for fee waiver requests and appeals.* It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: If processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, the Agency will request specific commitment when it estimates that fees will exceed \$100.00. The Agency will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed. This action, of course, would not prevent an individual from refileing his or her FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* The Agency may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed \$250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence

that the requester may not pay the fees which would be accrued by processing the request. The Agency will hold in abeyance for forty-five (45) days those requests where deposits have been requested.

(g) *Schedule of fees - 1) In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

Personnel Search and Review

Clerical/Technical	Quarter hour	\$5.00
Professional /Supervisory	Quarter hour	10.00
Manager/Senior Professional	Quarter hour	18.00

Computer Search and Production

Search (on-line)	Flat rate	10.00
Search (off-line)	Flat rate	30.00
Other activity	Per minute	10.00
Tapes (mainframe cassette)	Each	.90
Tapes (mainframe cartridge)	Each	9.00
Tapes (mainframe reel)	Each	20.00
Tapes (PC 9mm)	Each	25.00
Diskette (3.5")	Each	4.00
CD (bulk recorded)	Each	10.00
CD (recordable)	Each	20.00
Telecommunications	Per minute	.50
Paper (mainframe printer)	Per page	.10
Paper (PC b/w laser printer)	Per Page	.10
Paper PC color printer	Per page	1.00

Paper Production

Photocopy (standard or legal)	Per page	.10
Microfiche	Per frame	.20
Pre-printed (if available)	Per 100 pages	5.00
Published (if available)	Per item	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to the Agency of a particular item is less than the above schedule (e.g., a large production or run of a document resulted in a cost of less than \$5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) are also available from CIA pursuant

to this part at the NTIS price as authorized by statute.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) Limitations on collection of fees. —

(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to the Agency of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be \$10.00.

(2) Requests for personal information.

No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: "Commercial use" requesters, "educational and non-commercial scientific institution" requesters, "representatives of the news media" requesters, and "all other" requesters. The categories are defined in §1900.02, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) *"Commercial use" requesters:* Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) *"Educational and non-commercial scientific institution" requesters as well as "representatives of the news media" requesters:* Only charges for reproduction beyond the first 100 pages;

(3) *"All other" requesters:* Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two (2) hours of search time, which will be furnished without charge.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, the Agency may aggregate the requests and charge the applicable fees.